DOCKETED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JUL 18 1974
H. STUART CUNNINGHAM
At..................o'clock............
CLERK

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation,

Plaintiffs,

v.

BALLY MANUFACTURING CORPORATION, a corporation, CHICAGO DYNAMIC INDUSTRIES, INC., a corporation, ATARI, INC., a corporation, ALLIED LEISURE INDUSTRIES, INC., a corporation, EMPIRE DISTRIBUTING, INC., a corporation, and MIDWAY MFG. CO., a corporation,

Defendants.

Civil Action No. 74 C 1030

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620 Seybold Building
Miami, Florida,
Friday, June 14, 1974
9:30 a.m. - 10:45 a.m.

DEPOSITION OF DAVID H. BRAUN

Taken before Sylvia Tompkins, Notary Public for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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APPEARANCES

THEODORE W. ANDERSON, ESQ., of the firm of Newman, Williams, Anderson & Olson, on behalf of the Plaintiffs.

THOMAS A. BRIODY, ESQ., on behalf of the Plaintiffs.

GEORGE R. RICHARDS, ESQ., of the firm of Myers, Kaplan, Porter, Levinson & Kenin, on behalf of Defendant Allied Leisure Industries.

A. SIDNEY KATZ, ESQ., of the firm of Fitch, Even, Tabin & Luedeka, on behalf of Defendants Bally Manufacturing Corp., Empire Distributing, Inc., and Midway Manufacturing Company.

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I N D E X

Witness		Direct	Cross	Red.
David H. Braun	(By Mr. Anderson)	3		
	(By Mr. Richards)		67	
	(By Mr. Anderson)			70

MR. ANDERSON: Let the record show that this deposition is being taken pursuant to the Federal Rules of Civil Procedure and pursuant to notice under those rules.

I will ask the court reporter to mark, as Braun Deposition Exhibit 1, the original Notice of Taking Deposition which scheduled this deposition for today at 9:30 a.m.

(The document referred to was thereupon marked "Plaintiffs' Exhibit 1 for Identification," and is attached hereto.)

Thereupon--

DAVID H. BRAUN

was called as a witness by the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Braun, would you please state your full name for the record?

A David H. Braun.

Q What is your home address?

A 1600 South Bayshore Lane.

Q In what city?

A Miami.

Q And are you employed?

A Yes.

Q What is your employment?

A I am the chairman of the board, chief officer of Allied Leisure.

Q For how long have you held that position?

A Since the inception of the company.

Q When was that?

A Approximately five years ago, four or five years ago.

Q And the correct name of the company is Allied Leisure Industries, Inc.; is that correct?

A That's right.

Q And is that a Florida corporation?

A Yes, sir; yes, it is a Florida corporation.

Q Was that a continuation of some other business, or was that the inception of a completely new operation?

A Well, actually what happened: My son started a business. I retired and it was the

D & R Braun Enterprises, or company--either one; and then we took that and made the Allied Leisure, a public company; went public and put all our assets in that company.

Q And that conversion occurred four or five years ago?

A. About four or five years ago.

Q That would be in about 1970, then?

A. I think we went public in '71, didn't we? I think it was '71 that we went public. And this might have been a year before that, we started this company.

MR. RICHARDS: It was '69.

THE WITNESS: '69.

Q (By Mr. Anderson) Did you go public at the time that Allied Leisure was formed, or was it first closely held?

A. Well, it was a corporation closely held, that is true, until it took us time to go public. It took us almost two years.

Q So Allied Leisure was formed in about '69, but was then closely held?

A. It was closely held until '71, I think it was, when we went public.

Q What was the nature of the business of

Allied Leisure at the time that it was formed in 1969?

A. Mainly amusement devices, coin-operated.

Q. Coin-operated amusement devices?

A. Yes.

Q. Approximately what percentage of the company's business was coin-operated amusement devices in 1969?

A. I would say about 90 percent, 85 to 90 percent. I don't recall, you know, the exact numbers.

Q. Were those amusement devices games?

A. Games.

Q. In the nature of pinball games?

A. Well, we didn't make a pinball game until later on, but what we did was an Unscramble. The first game was called Unscramble; it was a word game, electromechanical.

Q. Electromechanical?

A. Yes.

Q. At that time did you have any product in your line which was a video game?

A. Oh, no.

Q. Do you now have a video game in your product line?

A. Not now.

Q You do not have a video game at the present time?

A No.

Q Have you at any time had a video game in your product line?

A Oh, yes.

Q When did you last have a video game in your product line?

A Well, we had a fire January 31st.

Q Fire, January 31st of this year?

A Yes. That wiped us out pretty much of everything. And I think we had a few chassis of whatever it might be, and we made some machines.

Q You made some machines since then?

A Since January.

Q Since January 31, 1974?

A I think we phased it out about two months ago--three months ago, two months ago. I'd say sometime in May we phased it out--or June or April.

Q Has Allied Leisure phased out all manufacturing operations?

A Oh, no; oh, no.

Q What is the present manufacturing operation?

A. Electromechanical machine.

Q. Is that the same line that you were making in '69 when you were formed?

A. Similar.

Q. Approximately how many video games have you put together since January 31, '74?

A. Not many. I don't know the count, but it's very little, very small.

Q. Less than ten?

A. Oh, no. I would say less than 200.

Q. Less than 200?

A. Excuse me. May I ask my attorney something?

Q. Certainly.

Who were the other officers of Allied Leisure Industries, Inc.?

A. My son Robert.

Q. What is his position?

A. He is the president.

Q. And what other officers?

A. And Ronnie Haliburton.

Q. What is his position?

A. He is vice-president and treasurer.

Q. Any other officers?

A. Peggy Plant, secretary.
Q. She is corporate secretary?
A. Yes.
Q. Any other officers?
A. No. Oh, yes: Mort Mendes, executive vice-president.
MR. RICHARDS: What about Chuck?
THE WITNESS: Yes. Chuck Arnold; he is the vice-president of sales.
Q. (By Mr. Anderson) And he was what, what is his position?
A. Vice-president in charge of sales; I believe that's it.
Q. Has a management decision been made by Allied Leisure with respect to the continuation or termination of the manufacture of video games?
A. Well, there's no sale for it so it's not a question of a market. If there was a market we'd make it, but there's no more market. It's played out like yesterday's newspaper.
Q. Has a decision then been made not to manufacture in the future?
A. Right now it has.
Q. When was the decision to cease

manufacture of video games by Allied made?

A. I was just about to bring out a point. My attorney said it didn't make any difference, so-- we haven't made a game for the United States since before the fire. Anything we did make--the few hundred we did make went to Europe. There is no market here in the United States for it.

Q. To the best of your recollection, when did you last make a game for the United States market?

A. I'd say it was prior to January 31st.

Q. Approximately how long prior?

A. I wouldn't know.

Q. Was it a matter of months or maybe a year?

A. No; it would be months.

Q. With respect to the less than 200 machines made since January 31, '74, to what countries were they shipped?

A. All over the world, all over, you know.

Q. Primarily Europe?

A. Primarily Europe.

Q. For those sales since January 31, '74, have you used some specific distributor?

A. Well, we have a national distributor.

Q A single national distributor?

A Yes.

Q Who is that?

A Mondial.

Q M-o-n-d-i-a-l?

A Yes. He only ships to foreign countries. He has an office here in the United States; that is all.

Q Do you use Mondial for all Allied Leisure sales or just certain sales?

A Just foreign sales.

Q For all foreign sales?

A Yes.

Q Where is Mondial located?

A They have one office in New York.

Q Do you work with the New York office?

A Well, the sales talks to the New York office. I don't have much to do with sales.

Q Would that be Mr. Arnold's area of responsibility?

A Well, either my son or somebody in the sales.

Q Does Mondial have an office in Florida, do you know?

A No.

Q Does Allied Leisure sell these video games that have been sold since January 31, '74, to Mondial, or does Mondial merely act in some sort of an agent or brokerage role?

A Mondial?

Q You sell to Mondial and invoice Mondial?

A Yes.

Q Do you ship to Mondial, or do you drop shipment to the ultimate consumer?

A Well, as a rule, they containerize most everything, and he gives the shipping instructions.

Q Did you say your dealings are with Mondial in New York City primarily?

A Yes.

Q Do you know if that is true excuslively of Mondial's operation that you deal with? Is that strictly in New York City?

A I don't follow the question.

Q In other words, does Mondial have any other office anywhere in the country that Allied Leisure works with?

A In the United States? Not to my knowledge.

Q Do you know the full name of Mondial?

A. No. Mondial International--Mondial something.

MR. RICHARDS: Is that the spelling: M-o-n-d-i-a-l?

THE WITNESS: Yes.

Q (By Mr. Anderson) Mondial, -d-i-a-l?

A. I think it's International something; I don't know.

Q Mondial Commercial Corporation; is that correct?

A. Yes; it sounds right.

Q Did you distribute your international sales through Mondial prior to January of '74, also?

A. Oh, sure. They have been our distributor since our inception.

Q Are they your distributor only internationally or also domestically?

A. Just internationally.

Q Then, do I understand you do not distribute any products through Mondial for domestic sales in the United States?

A. No.

Q How does Allied Leisure distribute its products domestically?

A. Through distributors.
Q. Approximately how many distributors does Allied use?
A. Approximately 50, 40 to 50; I don't know exactly.
Q. Are they generally distributed throughout the United States?
A. Mostly in every state.
Q. Do you have any in Illinois?
A. Yes.
Q. Will you name the ones that you have in Illinois?
A. We have one.
Q. What is that?
A. Empire.
Q. Empire Devices?
A. Empire Distributor. They are not our exclusive; they distribute for everybody, you know; they have various lines.
Q. For how long has Allied used Empire Distributing for its Illinois distribution?
A. I would say back from the beginning of the company.
Q. From '69 on?

A. I would say so.

Q. In that period has Allied used any other distributor in Illinois?

A. I don't recall, but I think we did use it in the beginning; we might have used somebody else.

Q. Does Empire Distributing distribute for Allied in any other states outside of Illinois?

A. I really don't know his setup. I know that he has a few offices. I think they've got one in Detroit and they handle our product in Detroit. They may not be exclusive with our product in Detroit. We may have another distributor.

Q. In the notice of deposition we requested that you bring certain documents to this deposition with you relating to your distributor relationship with Empire Distributing Company, Bally Manufacturing Company, or Midway Manufacturing Company.

A. We don't have any business dealings with Bally.

Q. Have you ever had any business dealings with Bally?

A. No.

Q. None whatsoever?

A. I mean, they are manufacturers; they

manufacture coin-operated amusement devices. Except for knowing them, we don't do much business with them or don't do any, as a matter of fact.

Q Have you ever done any business with them?

A Not to my knowledge.

Q Of any kind?

A Not to my knowledge.

Q And with respect to Midway Manufacturing Company, have you ever done any business with them?

A Same thing. They are our competitor-- which was all bought by Bally, including Empire.

Q With respect to Empire Distributing, Inc., you do do business with them?

A Yes, we do.

Q Have you brought any documents with you relating to that relationship?

A Yes, I did.

Q Will you take them out, please.

A (Handing)

MR. KATZ: I'd like to request copies of those documents if I might have them.

THE WITNESS: Excuse me. Am I going to have to leave these go? These are private business.

I don't think this is anybody's business, either his or yours, except he wants to see that we do business. I am willing to show it; I want to cooperate, but I don't believe anybody has a right to these papers. This is our business.

MR. KATZ: Granted, but if the documents are marked and become exhibits here, they will be public documents.

THE WITNESS: I don't think that is right. I mean, it's confidential business that I have with the distributor.

MR. RICHARDS: They are sales orders and invoices, I assume.

THE WITNESS: There's also correspondence. I mean, I don't think that is right. I'm not trying to be ornery, but I think the evidence is there that we do business with them; they are our distributors, period. I mean, the volume of business or anything that we do with them has nothing to do with the matter.

Q (By Mr. Anderson) Of the collection of documents that you have handed me, Mr. Braun, do any of them relate to video games?

A I wouldn't know. I'd have to look and see.

MR. RICHARDS: If you are concerned about the correspondence--

THE WITNESS: Yes.

MR. RICHARDS: Other than the invoices and the gross amount of the invoices, I think counsel is not interested in the fact of the volume that you do.

Q (By Mr. Anderson) Is Super Shifter a video game?

A That is a new game.

Q It is not a video game?

A No. You see, we have a lot of papers gone in our office. Everything burnt up and there was nothing specific.

There, that's a video game; that's video.

MR. KATZ: Perhaps you could have the witness look through the documents and pull out those that pertain to the video games. And then with respect to those, maybe we can enter into a stipulation on the record to maintain those in confidence or something with respect to our client, unless we can all agree that it is not or shouldn't be considered confidential.

Q (By Mr. Anderson) I imagine, as to

video games, you are out of that?

A. If I may, let me give you my reasoning so you will understand. Bally is my competitor; Midway is my competitor. Even though they own this company, this company is run--and I don't know, but they may know the volume they are doing, but I wouldn't want Midway or Bally to know about it, not through me, anyway.

Q. You may be right, although Bally owns Empire; I am not sure. But I think Mr. Katz' suggestion is a valid one. Would you go through the collection of documents and select from the documents only those that relate in any way to video games.

A. Well, this is where they returned one.

Q. Mr. Braun, have you sorted out those relating to video games?

A. Yes.

Q. I notice the earliest appears to be dated August 16, 1973. Were you able to find any documents relating to a business relationship with Empire Distributing prior to that day?

A. I could probably bring you a file that big, you know. I mean, if you tell me what you want specifically, I will be happy to give it to you.

But we have papers and I just brought a, you know, a handful of them. You know, we have been doing business with the firm for five years. Some burnt up and some didn't, but still in all we surely have more than that. It may not pertain to the TV games, but to show our relationship goes back to '69, '70.

Q Has there ever been any written agreement of any kind between Empire Distributing and Allied Leisure?

A No, no; we don't have any written contracts.

Q Empire Distributing acted as your distributor of your product, as I understand it, for the Illinois area, at least, and Detroit?

A That's right. I don't know if he still has Detroit as of today, but he did have it.

Q Has there ever been any other business relationship between Empire Distributing and Allied Leisure other than that of acting as a distributor of Allied Leisure products?

A I don't know what you mean by that. They called us up: "Miami send us"--most of our business is done over the telephone, and they call us: "Send us so many machines," and that is it. We tell

them we've got a new one ready; "Send it." Strictly distributor, nothing else. But, I mean if you gentlemen care to, I can give you--you can go back as far as you want.

Q With respect to the documents that you handed me all relating to video games and all relating to Empire Distributing, I would like to just mark them as a deposition exhibit collectively. And seeing they are all with Empire Distributing, would you have any objection to my doing this and providing Mr. Katz with copies of them?

A Except as I said, it was a confidential matter, and I don't see where it would have anything to do with being brought out in court or anywhere else.

What do you think?

MR. RICHARDS: I don't think it makes any difference because it's such a relation to such a short period of time. No one can get information as to what your total sales are. It's just a sample of orders from a particular period of time in which you brought down those files. I don't think it makes any difference to Empire, to you or anybody.

Q (By Mr. Anderson) If that is acceptable, Mr. Braun, I will ask the reporter to mark Braun

Deposition Exhibit 2, a collection of documents that you have handed me; and I will just read what appear to be the order numbers.

A. Can we just put a number on each one, 1 through--1, 2, 3, 4, 5?

Q. Right.

A. Exhibit A, or whatever you want to call it?

Q. Yes; that is what I will do.

Your order No. 3608, I will mark as 2-A-- and the reporter can mark them later. Your order No. 4827, I will mark as 2-B. Your order No. 4518, I will mark as 2-C. Your order No. 4009, I will mark as 2-D. 4290 is 2-E. 4268 is 2-F. 4005 is 2-G. 3692 is 2-H. 3695 is 2-I. 3696 is 2-J. 3803 is 2-K. 3694 is 2-L. 493 is 2-M. 5136 is 2-N. 5249 is 2-O. 5250 is 2-P. 5251 is 2-Q. 9136 is 2-R. 9162 is 2-S. 9235 is 2-T. 9226 is 2-U. 9381 is 2-V. A debit memo dated 1-23-74, and an attached bill of lading, I will mark as 2-W. And we will collectively have them known as Braun Deposition Exhibit 2. And I can provide you with the copies, Mr. Katz, if that is all right.

MR. KATZ: Thank you. I would like to

have the copies today.

Q (By Mr. Anderson) Have you brought with you any other documents in response to our request, Mr. Braun?

A You wanted something on the product.

Q We specifically asked for product literature on video games. I did that in a letter to Mr. Gerstman.

A He gave me that at the last minute.

This is the Super Shifter, the new one; this is the Paddle Battle; and this is the Tennis Tourney. Unfortunately, I couldn't give you much more because a lot of it burnt up in the fire.

Q Was there other literature beyond the three items that you have handed me, at one time or another?

A Oh, yes, yes, yes. We had another video game, but I couldn't find it: Super-Soccer.

MR. BRIODY: Super-Soccer, I have one of those.

THE WITNESS: Do you have our other games there, as well: The Gun, and things like that?

MR. BRIODY: You remember, Mr. Braun, that you sent to Magnavox some months ago a letter

with different brochures of your games. That is where I got that Super-Soccer from.

MR. ANDERSON: I will have the reporter mark it later to expedite things, as Braun Deposition Exhibit 3, a color brochure entitled Tennis Tourney.

THE WITNESS: These I don't care about because we send these out by the thousands, so it doesn't really matter if you want to make an exhibit out of it. The only reason I brought that up was because of a confidential nature.

MR. ANDERSON: Sure, I understand.

Braun Deposition Exhibit 4, a brochure entitled Paddle Battle. Braun Deposition Exhibit 5, a brochure entitled Allied's Super-Soccer. And Braun Deposition 6 a brochure entitled Super Shifter.

Q (By Mr. Anderson) Mr. Braun, you handed those in response to my request for literature about Allied Leisure products. Which of those relate to a video game?

A. Super-Soccer.

Q That is Exhibit 5.

A. Paddle Battle.

Q That is Exhibit 4.

A. And Tennis Tourney.

Q That is Exhibit 3.
And Exhibit 6 does not; is that correct?
A. No, sir.
Q Has Allied Leisure at any time had a video game in its product line other than Tennis Tourney, Paddle Battle, and Super-Soccer?
A. I believe we did.
Q And what are the names of the other products?
A. Well, actually they were the same games, but we gave them different--the same games but we gave them different titles. One was called a Ric-O-Chet and one was called Hesitation.
Q Hesitation, I can spell that.
Ric-O-Chet: How do you spell Ric-O-Chet, the conventional way?
A. The conventional way.
MR. RICHARDS: No.
THE WITNESS: R-i-c-O-C-h-e-t.
Q (By Mr. Anderson) Did you say that all five of the games were the same?
A. Oh, no, no. I said that those two: the Ric-O-Chet was the same as Tennis Tourney.
Q Ric-O-Chet was the same?

A. A different cabinet.

Q. It was the same as Tennis Tourney but in a different cabinet? And Hesitation?

A. Hesitation was a combination.

Q. A combination of what?

A. Of the Paddle Battle--well, actually it was this, with another feature; that is all.

Q. It was Tennis Tourney with another feature?

A. Yes.

Q. What was that feature?

A. We put the paddle on the top and one on the bottom, instead of on both sides.

Q. Which of the video games which Allied made was the first that it made?

A. Paddle Battle.

Q. When was Paddle Battle first made?

A. I don't recall.

Q. Or approximately when?

A. Last year sometime.

Q. In 1973 sometime?

A. Yes.

Q. Who developed Paddle Battle?

A. What do you mean by developed? A firm

by the name of Universal Research. Well, that is just--

Q What portions did Universal Research develop?

A The board.

Q The electronics?

A The electronic board.

Q The video display?

A The board to make the video display.

Q How did it display itself, the tube and associated circuitry?

A It was either a TV set or a monitor which we bastardized.

Q Which was it, in the first case?

A It was a TV set that we converted for a display. You know, we didn't use half the TV set.

Q Whose TV set did you use?

A I think the first one was Hitachi.

Q Did you at some point change?

A Yes.

Q To what?

A Sylvania.

Q Did you buy complete TV sets and modify them?

A That was the cheapest way to do it.

Q At some point you say you also employed monitors?

A Yes; we used monitors.

Q Did you switch over to monitors or did you run monitors and the TV sets at the same time?

A Actually we made the monitor out of a TV set; that is actually what we did. Then we found out probably it would be cheaper to buy the monitor even though it did cost more. So we bought monitors.

Q Whose monitor did you buy?

A We bought Motorolas and Ball Brothers.

Q B-a-l-l?

A Yes.

Q In addition to the TV set or monitor, plus the circuit boards provided by Universal Research, was there any other electronic portions or circuits required?

A I believe so.

Q What were they; do you know?

A Well, power supplies, things like that, wiring, harnesses.

Q Did Universal Research provide you with the specifications for putting their boards together with the other components to make a complete--

A. They put the components in themselves; they stuffed them in. They were a contract house that stuffed the board and sold it to us.

Q. Well, did you receive from them just boards or complete games?

A. Oh, no: boards.

Q. And Allied Leisure then combined those boards with a TV set or monitor, modified, plus a power supply, and that made up a complete game?

A. A wooden cabinet, a coin chute.

Q. Was that done in Hialeah?

A. That was done in Hialeah; yes, sir.

Q. And did Universal Research provide you with the specifications by which you were able to put the power supply, the TV monitor, and the boards that they sold you into a finished unit?

A. Oh, yes. They did the engineering on it.

Q. And they are located in Arlington Heights, Illinois?

A. On the outskirts of Chicago.

Q. Did you personally deal with Universal Research?

A. Well, I had dealings with them, yes.

Q Who did you deal with then?
A Bill and Ed Olges.
Q How do you spell Olges; do you know?
A O-l-g-e-s, I think it is.
Q Mr. Briody is showing me, O-l-l-i-g-e-s.
A O-l-l-i-g-e-s, William E.
Q And Ed.
A Ed lives in Barrington, Illinois.
Q Ed Olliges, also?
A No: Ed. I don't know his last name.
Q P-o-l-a-n-e-k, Polanek?
A That sounds like it, yes.
Q Do you have documents relating to your relationship to Universal?
A Yes, I do.
Q May I see those?
MR. KATZ: Before you turn those documents over, I think we should raise the question now as to whether or not those documents are of a confidential nature, keeping in mind that the documents that are produced as exhibits without any limitation will become public documents and they will be available to anyone.
THE WITNESS: You can't show them that.

MR. RICHARDS: Why not?

THE WITNESS: Because that's part of the lawsuit.

MR. RICHARDS: But that is a public document: copyright.

THE WITNESS: But we promised that we wouldn't do it.

MR. RICHARDS: No.

MR. ANDERSON: The copyright is of record in Washington.

MR. RICHARDS: You can show the patent, but what we have agreed to do is not to show the settlement agreement. Okay.

THE WITNESS: Oh, all right.

MR. KATZ: Are these documents being produced pursuant to the request for production of documents, or is this a voluntary informal production?

MR. ANDERSON: I think it is immaterial. I would think it's in response to our request, but we wouldn't stand on formality as far as that goes.

Q (By Mr. Anderson) Perhaps we can expedite this and short-cut a little bit if I just inquire of you about the general nature of the dispute and settlement that you mentioned earlier that is in

some way confidential. Between whom was this dispute?
A. Midway and ourselves.
Q. When did it arise, approximately?
A. Well, this goes way back. We had an item that we felt that--
MR. KATZ: I would suggest, if I might, I would at least suggest that perhaps the witness--in order to avoid disclosing any information which is confidential and which Allied Leisure has agreed to maintain confidential in terms of the agreement and settlement of that dispute--that the witness perhaps should restrict his answer only to the specific question that is being asked--
MR. ANDERSON: I agree with what you say.
MR. KATZ: --rather than giving a narration.
MR. ANDERSON: Raise your objection if I raise an improper question.
Q. (By Mr. Anderson) And my question right now is: When did the dispute arise approximately between Midway and Allied?
A. About two years ago, maybe three, two or three years.
Q. Did it relate to video games at that

time?

A. No, sir.

Q Approximately when was this dispute resolved by a settlement agreement?

A. Just recently.

Q This year?

A. Within a month that it was dismissed, wasn't it? April 10th.

Q Was there an actual lawsuit between the parties?

A. I would say so. Well, there was, yes.

Q A complaint was filed somewhere?

A. Yes.

Q Do you have a copy of the pleading there? May I see it?

MR. RICHARDS: This is a copy of the stipulation of dismissal.

MR. ANDERSON: This is a public record, I take it?

MR. RICHARDS: Yes.

Q (By Mr. Anderson) Did the lawsuit, Allied v. Midway, Civil Action 73-C-2682, involve video games in any way?

A. Yes.

Q In what respect did it involve video games?

A We had a copyright on the board.

Q Then perhaps I will have the reporter mark, as Braun Deposition Exhibit 7, the stipulated dismissal order, Allied v. Midway 73-C-2682.

A Except I want to get these back.

Q We'll make copies of everything you have.

A I don't know what my girl has. I imagine they are duplicates, but I still would want to make sure.

Q And as Braun Deposition 8, a letter dated July 9, 1973, from Mr. Olliges to Mr. Braun; as Braun Deposition Exhibit 9, a letter dated February 19, 1973, from Mr. Olliges to Mr. Braun; as Braun Deposition 10, a copy of a certificate of registration of copyright, IP 11640; as Braun Deposition Exhibit 11, a copy of certificate of registration of copyright, registration No. IP 11627; and as Braun Deposition Exhibit 12, a copy of certificate, copyright registration IP 11626.

With respect to the last three, Mr. Braun, Exhibits 10, 11, and 12, are those the copyrights to which you were making reference?

A. Yes.

MR. KATZ: Excuse me, could I have those numbers? 10, 11 and 12?

Q (By Mr. Anderson) Do those copyrights relate to printed circuits that were developed by Universal Research Laboratories?

A. That's correct.

Q Was that work done under your sponsorship, Allied sponsorship?

A. We paid for it.

Q Allied paid for it?

A. Yes.

Q And owned the copyrights?

A. Yes, sir.

Q Did Universal Research then sell boards incorporating those copyrights to others?

A. No. The letter was self-explanatory.

MR. RICHARDS: Just answer the question.

THE WITNESS: No.

Q (By Mr. Anderson) Did the lawsuit, Allied v. Midway Civil Action 73-C-2682, involve a complaint of one of the parties against the other involving video games?

A. You are talking about this Allied

v. Miday?

Q Yes.

A. Yes.

Q Who was the party complaining with respect to--

A. I complained that they infringed on my copyright.

Q To the best of your knowledge, did Midway have a business relationship of any kind with Universal Research Laboratories?

A. Did they?

Q Yes; at that time.

A. Not at the time--when we went in with this thing, they were exclusive with us. We paid for the development. We paid for them to manufacture and stuff the boards for us under an exclusive basis.

Q And was it Allied's belief--

A. Whether they did business with Midway or Bally, I don't know. It's none of my business. Prior to this, I don't know.

Q Prior to the lawsuit?

A. No; prior to we contracting with them. After we contracted with them, they worked exclusively for us in this particular field. They have a business

in electronics. They are in the electronics business, but for this particular thing it was exclusive for us--coin-operated amusement devices.

Q Is it true today that Universal is exclusive with Allied with respect to coin-operated video games?

A Not only video, any electronics works. If I want some sophisticated electronics work, they do them for me.

Q Is that still true today?

A That is true for today.

Q On an exclusive basis?

A Yes; just on a coin machine. They do work for different companies, but to my knowledge I don't think it's in related fields.

Q Do you know if they do business with Midway or Bally or Empire?

A They might have a project going; not to my knowledge.

Q You have some other documents that you have produced with respect to your relationship with Universal, I believe. Will you state what they are?

A Well, here it shows that we paid for development costs. We paid for when they repaired a

board out of warranty. These are all warranties that were out of warranties.

MR. RICHARDS: Just give them some samples and tell them what they are. You have hundreds of them.

THE WITNESS: Those are freight charges, charges on shipments made on our behalf.

Q (By Mr. Anderson) I don't think we are interested in these freight charges or the out-of-warranty repair charges. The only one of the documents that you have handed me that I am interested in is the development question. Do you have any further documents between Allied and Universal on development?

A. I don't have it with me, sir.

MR. KATZ: Could you identify that document that you are referring to?

MR. ANDERSON: Yes, I will.

THE WITNESS: That is all I have right with me.

MR. ANDERSON: I will ask the reporter to mark as Braun Deposition Exhibit 13, Universal Research Laboratories, Inc., invoice 21991, dated 6-6-74.

THE WITNESS: I need the invoice back.

And delete the numbers.

Q (By Mr. Anderson) You would like the number deleted, and then we may have a copy of it?

A That's right.

Q All right. I think that is acceptable. I will mark it in pencil, No. 13. There is a yellow copy attached. We only need a copy of the cover, of the original.

A I need the original.

MR. ANDERSON: It might be well to agree that we will attach copies of all the exhibits to the transcript and return the originals to Mr. Braun and to Mr. Katz.

MR. KATZ: I'd like to have the copies today because of the continuing depositions scheduled that we have next week.

MR. ANDERSON: We can probably get that done today, I think.

MR. RICHARDS: And we will agree to delete the dollar figure on the invoice.

MR. ANDERSON: Yes; that is acceptable.

Q (By Mr. Anderson) Mr. Braun, I place before you invoice 21991. And in case it relates to game AL-70000-Carry Hockey, is that a game that Allied

ever made and sold?

A. No. This is why: See, like I said, th video game is yesterday's newspaper, and this is a game prepare ahead. And this was their share of the development costs, that they paid half and we paid half. So we paid them the part because we are not going to make it.

Q. Did you have a contract with Universal?

A. Yes; you have a copy of it.

Q. That is the letter of February 19, 1973; is that correct?

A. That is the contract.

Q. It says: "This letter will serve to clarify our verbal agreement." That is in Deposition Exhibit 8.

A. Yes.

You asked a question before that I couldn't answer. The answer might be right here.

Q. You are pointing to Exhibit 9?

A. You asked me when we started. So it would be somewheres in that area, maybe February or March; I think it was March.

Q. Do the two letters, Braun Deposition Exhibits 8 and 9, as far as you know represent the

complete agreement between Allied and Universal for video games?

A. Well, it's not only video games. I believe it states there they make anything that--coin-operated games. I mean, I can't take a man and say, "Here, give up your business and just work me." They had their business there.

Q. But my question is, as far as you know, do Exhibits 8 and 9 set forth the business relationship between Allied and Universal relating to video games?

A. Right.

Q. Apparently, prior to February 19, 1973, from the first few sentences of Exhibit 9 there were some contacts and relationships between Allied and Universal?

A. That is correct.

Q. When did that relationship first begin, to the best of your knowledge?

A. Maybe a year or so before that.

Q. And what was the initial contact?

A. They sold us a signal generator. They made one for the trade; it was just a product of theirs.

Q. With respect to video games--

A. And nothing to do with video games.

Q What was the first contact with respect to video games?

A I think that was it.

Q Now, the letter of February 19th refers to delivery of first prototype units, February 26th or before. It would appear that substantial work had been done then prior to February 19th on prototype units for video tapes?

A We move pretty fast.

Q Prior to February 19th, had Universal, to the best of your knowledge, done any work on circuit-board design for video games?

A I don't recall. It could have been a week or so before that.

Q With respect to video games, did Allied initially contact Universal, or vice versa?

A I don't know.

Q What is your earliest recollection of a contact between Universal and Allied relating to video games?

A Somewheres in that time.

Q What was the incident that you recall; was it oral, telephone?

A Probably.

Q Personal visit?

A No; probably called him.

Q Do you recall whether you called them to see if they could make one, or whether they called you and said that they could make one?

A Well, I didn't handle that particular thing, but to the best of my knowledge my engineer knew their qualifications and called them and asked them to make one.

Q And who was your engineer?

A Haliburton.

Q Do you know whether they had had any experience with video games prior to that time-- Universal, that is?

A No; I don't believe so.

Q Did they at Universal design each of your video games?

A Yes; they did.

Q Did anyone at Allied do any electronic design work on the video games which Allied made?

A No. Would you repeat the question?

(The pending question was read by the reporter as above recorded.)

A Well, as I stated before, it takes more than just the board to make a game; and we might have done some design work on the wiring and amplification, or things like that.

Q Or power supply?

A Power supply.

Q But on the logic--

A No; we had nothing to do with the logic.

Q To the best of your recollection, on what date did Allied first sell a video game?

A I would say it was somewheres around April.

Q April of 1973?

A March or April.

Q Which game was that?

A Paddle Battle.

Q Approximately on what date was the first video game sold to Empire Distributing?

A I wouldn't know that offhand.

Q Approximately the same date, would you say?

A Well, it would be sometime in April.

Q When Allied sells to Empire Distributing's chain office, is the product shipped directly to

Empire Distributing or is it drop shipped?

A It is shipped to their office.

Q To their office in Chicago, on Sangamon Street?

A Wherever it is.

Q Is that always the case?

A No. We may ship into Detroit if he tells us to ship machines into Detroit, the distributing office in Detroit.

Q With respect to video games, to the best of your knowledge have you ever shipped in response to an Empire order to Empire's designated customer?

A I wouldn't know that.

Q Approximately when was Tennis Tourney first sold?

A This was around the end of August.

Q When was the first Super-Soccer sold?

A I know it was after August because that was the third machine. Okay, November, somewheres around there.

Q Were the initial sales of these products to Empire Distributing Company?

A What do you mean by that?

Q Was the initial sale of a Paddle Battle

game to Empire or someone else?

A. Hell no. We shipped out to all our distributors.

Q. I just wondered, because you were looking through the Empire.

A. To give me an idea--when you were asking about Empire, it gave me an idea about the time, because I didn't remember when we were manufacturing; just refreshing my memory.

Q. Roughly, what percentage of your video game sales were to Empire Distributing Company, would you say?

A. I don't know.

Q. Would it be in the order of 10 percent, do you think?

A. I don't think so.

Q. Less or more?

A. I would say less.

Q. Has Allied at any time had any business relationship at all with Atari, Incorporated?

A. No; we had no business relationship. We had a drink together.

Q. Has Allied ever had any business relationship with Chicago Dynamic Industries?

A. No; except Chuck came from there.
Q. That is Chuck Haliburton?
A. Chuck Arnold. They are also a competitor of ours.
Q. Has Allied had any business relationship with any other manufacturer of a video game?
A. No; none whatsoever.
Q. Has Allied shown its video games at any trade shows or consumer shows?
A. Not consumer, only trade.
Q. Only trade shows?
A. Yes.
Q. What trade shows?
A. London, Chicago, Miami; I think they had one in L.A.
Q. Were these all during 1973?
A. Well, I mean you asked me did I show any trade shows.
Q. Video games at trade shows?
A. Well, the only time that I could have sold that is in 1973.
Q. Conceivably so.
A. We didn't have a show this year yet. Well, no, it could have been in '74.

Q What London show did you show video games at?

A. It was this last year. It was a short show. I don't even know if we attended. I don't even know if we were there, because they had a problem with the power shortage. But I have to bring back that question because actually the question you asked--I thought, where would we have shows: It doesn't necessarily mean that the shows were there in '73 in these areas. I mean, I don't want to mislead you.

Q Right; and I understand and I appreciate that. I would like to know if you know whether you showed video games at a London show at any time?

A. I am sure they were shown. But they were not shown--in other words, we didn't do the showing actually. Our distributor in London did it.

Q Who is that?

A. They have a different setup in Europe. Their distributor puts on the shows, maybe in Germany, maybe in France, maybe in England, and the distributor is the one who does it; and Mondial arranges for it.

Q What trade was that that had the show in London?

A. Coin machine.

Q Coin machine?

A Always coin. I don't know what the title of it is, what organization, but it is a coin machine show.

Q In Chicago, at what show, or shows have you shown--

A Coin machine show. And the show was 11-5-73.

Q 11-5-73? This was the MOA?

A That was the MOA show at the Conrad Hilton Hotel.

MR. KATZ: What was the date?

THE WITNESS: 11-5-73--well, the show was after that. That was the time I made the delivery of our parts to the show.

Q (By Mr. Anderson) And you are referring to specific documents in that regard?

A Yes. In other words, that is when our truck picked up the stuff to deliver it to the show.

Q May I see the documents that you are referring to?

A (Handing)

Q These are mostly duplicates. If it is acceptable, Mr. Braun, I will have the reporter mark,

as Braun Deposition Exhibit--

A. No; that is an original copy, isn't it?

Q. I will just have the top one marked as Braun Deposition Exhibit 14, which is invoice No. 48663; and the top copy of order No. 5166 marked as Braun Deposition Exhibit 15.

And I ask you if I am correct, that Exhibits 14 and 15 relate to the shipment of video games to Chicago?

A. Not all video, just two. There were two Tennis Tourneys and two Super-Soccers.

Q. Those are video games?

A. Those are video games.

Q. They were in fact delivered to the Conrad Hilton?

A. They were delivered to the Conrad Hilton. This is an order for the convention boss there to set them up.

Q. Were they then operated at the Conrad Hilton during the MOA show?

A. Yes; we have a model display.

Q. Did Allied Leisure have personnel there demonstrating at that time?

A. Yes.

Q Who was at the show in Chicago?
A We generally all go.
Q So that would be you and your son Bob?
A And our sales personnel, Chuck.
Q Arnold?
A No; he wasn't there yet. It was Jean Lipkin.
Q Have you ever had a video game on display in Chicago at any other time other than at the MOA show in November of 1973?
A I didn't.
Q Allied?
A No.
Q Has Allied at any time--
A I mean, to the best of my knowledge. There would be no reason for us to take a machine and show it, except ship a machine to our distributor and let him show--whatever showing they have.
Q Have you at any time shipped a machine--a video game--to Empire Distributing for them to show on your behalf?
A They wouldn't be showing on our behalf.
Q Or for them to show in order to promote the sales of Allied's--

A. As a rule, they buy--we send them a sample, and they are given a quantity and see if they take in any money and they will buy more. Now, they may have their own shows in different areas, showing our product to sell it. They may go anywheres, I mean. I don't know just where they go.

Q. With respect to the video games, did Allied ship a sample--one or more samples to Empire Distributors?

A. Definitely not only to them, but to every one of our distributors.

Q. But specifically to Empire Distributing?

A. We shipped them.

Q. Is that on a no-cost basis--

A. Oh, no.

Q. --that the samples are shipped?

A. Oh, hell no.

Q. Are they sold--

A. They are sold to them.

Q. --are they sold at a special sample price, for sales purchases?

A. No. That is the price, whatever the selling price would be.

Q. I certainly want to minimize the document

burden on you. Would you be willing to find for me--unless you have it here--the earliest invoice that you can find for each of the video games that were sold to Empire Distributing?

A I don't know; they may be here, but I couldn't verify that, but I'd be very happy to mail you a copy.

Q All right. I would like to have--

A You want the first?

Q The earliest, the first sale to Empire of each of the video games about which you have testified: Super-Soccer, Tennis Tourney, Paddle Battle, and the others that you mentioned if they would be separate.

MR. ANDERSON: Mr. Katz, perhaps the best way to do that would be to have them deliver them to the court reporter who could then assign them numbers and include them within this deposition, if that is all right with you, and send you any copies?

MR. KATZ: Fine.

THE WITNESS: Do I have to put the dollar amount in there?

MR. ANDERSON: As far as I'm concerned, you can delete the dollar amount, if that is all right with Mr. Katz.

MR. KATZ: Yes.

THE WITNESS: I will just delete the dollar amount and photostat the rest.

MR. ANDERSON: Right. Just put a little piece of paper over the dollars, or whatever you want to do.

Q (By Mr. Anderson) Does Allied have any employee who resides outside of the State of Florida?

A. No.

Q Has Allied at any time since its inception, had an employee who resided outside of the State of Florida?

A. I don't believe so.

Q Does Allied presently--

A. You mean while they were in my employ?

Q While they were in your employ?

A. To the best of my knowledge, no.

Q Does Allied at the present time own any video games which are situated outside of the State of Florida?

A. We don't own any equipment.

Q Has Allied at any time owned any video games that were situated outside of the State of

Florida, except at the specific shows that you mentioned?

A No. I mean, it's either sold or they are in our plant.

Q Has Allied at any time owned any real estate outside of the State of Florida?

A Allied does not own real estate.

Q Has Allied at any time leased or rented any property, real estate property outside of the State of Florida?

A I don't believe so. I'd say, no.

Q Does Allied provide service for its video products, its video games?

A We guarantee all our products, with certain limitations. In other words, we give them a warranty.

Q If there is a defect in the Allied video game, how does Allied honor its warranty?

A As a rule we will exchange the board for them.

Q Who does the actual on-the-spot exchange of the board within the machine?

A Well, what we generally do, we send our distributor a certain amount of boards for him to have

an inventory. And then the operators or the people that buy the equipment from him come down to his office and gives him that, takes that board and returns it to us and we repair it, and we have a library of it.

Q. Does Allied have any field service personnel?

A. Well, we didn't. We are just inaugurating schooling, you know, having somebody go out and teaching--every distributor has their own mechanics, but we send them out to get them familiar with our machine. So we hold a school when we come out with a new machine.

Q. Do you have one or more employees involved in that program?

A. We just got a person. Frankly, we weren't doing it before. We just inaugurated that very recently because it was so simple. They'd call us on the phone, they got a problem, send the board back, give them another one; and that was the end of it.

Q. When did you put on this field service personnel?

A. Just recently. I think this is the

first week that we are going out and teaching them, holding schools.

Q Will he teach field servicing of video games?

A Well, not really because that is past. No, we don't bother no more with that. They are out of warranty and that is the end of it. They come back, they want a new board and we will sell them a new board or repair their board, whichever the case may be.

Q Has Allied had any business relationships with Seeburg Corporation at any time?

A No, sir.

Q Has Allied Leisure at any time leased any video games to anyone?

A Not to my knowledge.

Q Has Allied, to the best of your knowledge, ever sold any, or delivered any video games on consignment?

A No. See, leasing and consigning is not our business.

Q Is there now some type of license arrangement between Allied and Midway or one of its related companies?

A I don't think it has any bearing on this

matter at all.

Q Well, I understand that there was a dispute between Midway and Allied relating to video games and an allegation by Allied that Midway copied Allied's video game boards, as set forth in the complaint. And it is my understanding that that dispute was settled?

A. That's correct.

Q And I would ask you--

A. Amicably.

Q Amicably, yes; that is my understanding.

Now, my question is: Does that amicable settlement involve a license relationship between Allied and Midway, a licensor-licensee relationship?

A. I really don't know how to answer that.

Q Well, yes or no?

A. It's a confidential thing, and I don't believe there was a license. I think we settled it and that was the end of it.

MR. ANDERSON: Do you want to comment?

MR. KATZ: No; I am not going to comment.

Q (By Mr. Anderson) Were rights granted to Midway under the settlement by which Midway could make the video games or boards for video games previously

made by Allied?

A. Well, now you are asking me the confidential settlement of what happened between Midway and ourselves.

MR. RICHARDS: May we go off the record for a minute?

MR. ANDERSON: Sure.

(Informal discussion off the record.)

Q (By Mr. Anderson) The question basically is: Under the settlement, were any rights given to Midway to make the video games or boards for video games previously being made by Allied?

A. I don't know.

Q Have you at any time had any discussions with other video game manufacturers regarding the Magnavox Company or its patent position?

A. I assume we did, but to no extent.

Q With whom have you had such conversations?

A. Frankly, I believe it was mainly--I spoke to Midway once, once or twice about it, and Gerstman was generally the one who was handling it. I didn't get involved in it except when we had this thing with Midway; then we talked about it.

Q And you personally talked with Midway about it?

A Yes. I think it's Henry Ross, I believe it is.

Q Henry Ross at Midway?

A Yes.

Q Anyone else at Midway that you discussed that with?

A Not to my knowledge, no.

Q And on how many occasions did you discuss the Magnavox patent?

A Not too many because I still don't understand it.

Q What is the earliest conversation that you recall with Henry Ross in this regard with respect to Magnavox and its patent position?

A Sometime around December, I would say.

Q Where did that conversation take place, here or in Chicago?

A Over the telephone.

Q Relate the conversation.

A Well, we were talking about the Magnavox patent, and nobody seemed to understand where the encroachment or anything was. So I says, well,

when we are ready they will let us know. That was it.

Q Did you discuss with Mr. Ross--

A. Neither of us are engineers. So going into the details, we just talked as businessmen.

Q Did you discuss at all how you would handle the problem?

A. No.

Q That was the first conversation. And what is the next conversation that you recall?

A. Well, probably the same, you know.

Q What is the most recent conversation that you can recall with anyone at Midway regarding the Magnavox patent position?

A. I don't think I had--I think all the conversation was between Gerstman and my attorney.

Q That is Gerstman?

A. George Gerstman.

Q Have you ever discussed the Magnavox patent position with any other video game company other than Midway?

A. Not to my knowledge.

Q Have you ever discussed with anyone any sort of indemnity or hold-harmless agreement with respect to the Magnavox patent agreement?

A. Not to my knowledge.

Q. Have you produced any other documents in response to the notice of deposition other than the ones you have showed us?

A. There was nothing else you asked for.

Q. On how many occasions in the last 20 months have you been in Chicago?

A. Twenty month?

Q. Since January 1st of 1973.

A. Oh, I might have been there once or twice.

Q. Were you there for the MOA?

A. For the MOA.

Q. Any other occasions that you remember?

A. We might have visited with Hank Ross in reference to our lawsuit; and, of course I went over to see Universal. While I was in Chicago I went over to see Universal.

Q. On occasion of your MOA trip?

A. I think I went there once after that or once before, either one.

Q. Did you go there to Chicago at the time that you were initiating the relationship with Universal?

A. No; I don't believe so. No, I wasn't

involved in that. You see, they were selling us a product--no.

Q Did anyone from Universal come here at the time you were initiating?

A. I believe so. I think it was Ed and Bill came to Miami. They come here quite often.

Q Have you ever discussed with anyone a possible joint defense of the action involving the Magnavox Company?

A. Not I.

Q Anyone in your organization?

A. Not to my knowledge.

Q Have your attorneys; do you know?

A. That, I don't know.

MR. ANDERSON: I think that is just about it. If you will give me about a one-minute break. Let me leave the room and talk to Mr. Briody.

MR. RICHARDS: I will have a short cross-examination and I think we will be finished.

MR. ANDERSON: Mr. Katz, will you have any cross-examination?

MR. KATZ: I don't think I will have any.

(Thereupon a short recess was taken, after which the following proceedings were had:)

Q (By Mr. Anderson) I have just a few additional questions, Mr. Braun.

Do you know whether Universal Research Laboratories is now selling video games or boards for video games to anyone other than Allied?

A. Not to my knowledge.

Q Have you ever heard of a company known as Control Sales in Des Plaines, Illinois?

A. No.

Would you be kind enough--this is the only copy that you have?

Q Yes; that is the only copy that we have.

A. Could I have a copy of that? I am interested in that.

Q For convenience, let's mark it as the next deposition exhibit, which is Braun Deposition 16, a document which I have handed to the witness, entitled Video Action.

And I ask you, Mr. Braun, whether you have ever heard of a video game called Video Action?

A. Never heard of it.

Q On the reverse side of Braun Deposition No. 16, it appears that the document is from a company Control Sales in Des Plaines, Illinois. Have you ever heard of that company?

A Never heard of it.

Q We found we were just not quite clear on the operation of Mondial. Have they ever sold video games for you domestically within the United States?

A No; no, sir.

Q When, Mr. Braun, did you first become aware at all of the Magnavox patent position?

A I think he spoke to George Gerstman, and George called me.

Q Mr. Briody spoke with Mr. Gerstman?

A Yes.

Q Anything at all before that time?

A I don't recall.

Q Do you recall receiving a letter from Mr. Briody on or around July of '73?

A I don't know whether that was before or after Mr. Gerstman spoke to him.

Q But you do recall receiving a letter charging infringement?

A I believe I got a letter; I'm not sure.

MR. BRIODY: Can I ask a question?
MR. ANDERSON: No, not now.
Q (By Mr. Anderson) Mr. Braun, approximately how many video games has Allied made and sold?
A. I don't know.
Q Roughly?
A. I haven't the slightest idea. No sense in giving you a figure; I don't know.
Q More than a thousand?
A. I would say so.
Q More than 2,000?
A. I would say so.
Q More than 3,000?
A. I believe so.
Q More than 5,000?
A. Yes; I would say so, but you asked me the amount and I don't know. You are talking about rounded-out numbers.
Q I am just trying to get a rough handle on it. More than 10,000?
A. I don't know about that.
Q Has Allied accrued any reserves for patent indemnification or protection?
A. I don't believe so.

Q Not to the best of your knowledge?

A I don't believe so.

MR. ANDERSON: No further questions.

CROSS EXAMINATION

BY MR. RICHARDS:

Q Mr. Braun, at any time since the inception of Allied Leisure has Allied Leisure had a telephone listing in the Northern District of Illinois?

A No, sir.

Q Has Allied leased any spaces in that district?

A No, sir.

Q Has Allied owned any property in that district?

A No, sir.

Q Has Allied maintained an office in that district?

A No, sir.

Q Has Allied had any employees resident of that district?

A That worked for us? No.

Q Has Allied maintained any bank accounts in that district?

A No.

Q I am not sure whether I asked the question or not, but has Allied any telephone listing in that district?

A No.

Q Do any employees of Allied on any regular basis visit--

A No predetermined basis; no, sir.

Q I believe Mr. Anderson had previously asked you whether they had, in fact--employees of the company had gone to the trade show?

A Yes, they have.

Q And other than the incidents that you had testified previously as to the trade show--the visit to Universal and the one visit with Mr. Ross--were there any other--

A Not to my recollection.

Q --other visits by Allied employees?

A No.

Q Where are Allied's manufacturing facilities located?

A In Hialeah.

Q Are there any other facilities located in any other jurisdictions?

A None of ours.

Q Is Empire Distributing the exclusive distributor of Allied in the Northern District of Illinois?

A In the Chicago area, I would say yes.

Q Products manufactured by Allied, how are they shipped to Empire?

A Through normal freight lines.

Q And how is the freight charged?

A Oh, it's all FOB Miami.

Q Miami?

A Yes.

Q Or Hialeah?

A Well, Hialeah.

Q And Allied manufacturing facilities are located in Miami or Hialeah?

A Hialeah.

Q Does Allied solicit any sales directly from others in Chicago for the Northern District of Illinois?

A Not to my knowledge.

MR. RICHARDS: I have no further questions.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q With respect to the solicitation of sales in the Northern District of Illinois, you said, "Not directly." How does Allied solicit sales in the Northern District of Illinois?

A I think the question was--he asked me whether we sold other distributors in Chicago.

Q Does Allied solicit any sales from the Northern District of Illinois indirectly?

A If we didn't do it directly, we don't do it indirectly.

MR. RICHARDS: I was trying to elicit the fact that Empire would be our distributor, and our sales would be made to Empire directly, and sales to others would be made by Empire themselves. That was the question I was trying to elicit.

Q (By Mr. Anderson) I think you said Mr. Arnold is vice-president in charge of sales?

A Yes.

Q Does he have a sales force working for him?

A Well, what you call a sales force, the whole thing is three people.

Q Including Mr. Arnold, or in addition to Mr. Arnold?

A Including.

Q Who are the other two?

A My son and Jean Lipkin and Chuck Arnold.

Q Do they travel in their sales' role?

A Occasionally; most of our sales work is done right over the phone. There is no need for us to go out most of the time, except to say hello.

Q Since January 1 of '73, how many times would you estimate that Bob Braun has been to Chicago?

A With the show. Other than that, there would be no need for him to go.

Q With respect to Jean Lipkin?

A Same thing.

Q The show, and perhaps no other time?

A There's really--like I said, most of our business is done on the telephone, and we don't travel very often, except on a goodwill tour or something like that. So they might have made a trip across the country and stopped in Chicago.

Q Well, approximately how many goodwill tours a year?

A Maybe two or three.

Q By whom?

A It could be by Jean; it could be by Bobby. Chuck wasn't there. So it was either Jean or Bob. Sometimes we'd send out a technical man to do the same thing.

Q How many technical men do you have that perform in this role?

A One that is capable of going out; it's only one.

Q What is his name? What are their names?

A Well, we had--let me rephrase that. Only one goes out. We have had three; we have three people that are capable.

Q Who is the one that goes out; what is his name?

A I said only one of the three would go out. We have three people that are capable.

Q I see.

A Any one of the three could go out. Now in the beginning, Troy went out.

Q Troy? Is that the first name?

A Troy Livingston.

Q What is his position with the company?

A Right now he's just in production.

Q And who are the others?

A The others would be Roland--I don't know his last name; he's also the engineer; he's in engineering.

Q And the third one?

A The third one is Ian something.

Q I-a-n?

A I-a-n. He's a new employee. This would be after; and he's in engineering.

Q Does Allied Leisure Industries, Inc., have any subsidiaries?

A Yes.

Q What are the subsidiaries?

A Just one that I am familiar with. I think it's Allied International; I'm not sure.

Q Where is it located?

A Here in Miami.

Q In Hialeah, also?

A Yes.

Q What is the nature of the business of Allied International?

A It is a disc corporation.

Q I'm sorry, I don't know what that means. D-i-s-c?

A Yes. It means for shipments across--out of the United States. It would be handled through them.

Q Does it perform any other function?

A That's it.

Q Is it wholly owned?

A Yes.

Q Does Allied have any other subsidiaries wholly or partially owned?

A No, sir.

Q Has Allied at any time indemnified any-one against patent infringement claims?

A Not to my knowledge.

Q Does Allied International have sales?

A That's all they have.

Q No manufacturing at all?

A No manufacturing.

Q Does it purchase all of its goods from Allied Leisure Industries?

A That's right.

Q Does it sell any product domestically?

A No, sir.

Q Are there any other companies that are controlled by Allied Leisure Industries or by you

personally that are in the video game business in any way?

A No, sir.

Q Does Allied International have any subsidiaries?

A No.

MR. ANDERSON: I have no further questions.

MR. RICHARDS: I have no further questions.

MR. KATZ: I have no questions.

MR. ANDERSON: Then you will provide us with this one exhibit: on the earliest sales to Empire? Deliver them to the court reporter, who will make a copy and send us a copy.

And normally, it is required that you appear before this notary and sign the transcript of your deposition. I would suggest, that perhaps we could agree that you could sign it before any notary public so you wouldn't have to seek this lady out.

Is that acceptable, Mr. Katz?

MR. KATZ: Yes.

MR. ANDERSON: Mr. Richards?

MR. RICHARDS: Yes.

MR. ANDERSON: Let's so stipulate.

THE WITNESS: I won't be back for two or three weeks.

MR. ANDERSON: That's all right. We extended our time on this particular problem I think for 30 days, so we've got time.

MR. RICHARDS: I would suggest that we attach copies of the exhibits at the end of the deposition and let the reporter file with the court.

(The documents as previously indicated by number were marked by the reporter, and are attached hereto.)

(Thereupon the taking of the deposition was concluded.)

[signature]

Sworn to and subscribed before me this 13th day of July 1974.

Notary Public, State of Florida at Large
My Commission Expires Feb. 28, 1975

Wanda Martin

CERTIFICATE OF NOTARY

STATE OF FLORIDA:
: SS.
COUNTY OF DADE:

I, SYLVIA TOMPKINS, being a Certified Shorthand Reporter and a Notary Public for the State of Florida at Large, do hereby certify that I reported the deposition of David H. Braun, a witness called by the Plaintiffs in the above-styled cause; that the said witness was duly sworn by me; that the witness thereafter read and subscribed said deposition; and that the foregoing pages, numbered from 1 to 76, inclusive, constitute a true and correct transcription of my shorthand report of the deposition by said witness.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS my hand and official seal in the City of Miami, County of Dade, State of Florida, this 16th day of July 1974.

Sylvia Tompkins

NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES JULY 19, 1977
BONDED THRU MAYNARD BONDING AGENCY